



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 73 and 74**

**[AU Docket No. 17-329; DA 19-273]**

**Auction of Cross-Service FM Translator Construction Permits Scheduled for June 25, 2019; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 100**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final action; requirements and procedures.

**SUMMARY:** This document summarizes procedures and announces upfront payment amounts and minimum opening bids for the auction of certain cross-service FM translator construction permits. The Public Notice summarized here is intended to familiarize applicants with the procedures and other requirements for participation in Auction 100.

**DATES:** Upfront payments are due on May 23, 2019. Bidding in Auction 100 is scheduled to start on June 25, 2019.

**FOR FURTHER INFORMATION CONTACT:** For auction legal questions, Lynne Milne in the Office of Economics and Analytics' Auctions Division at (202) 418-0660. For auction process and procedures, the FCC Auctions Hotline at (717) 338-2868. For FM translator service questions, James Bradshaw, Lisa Scanlan or Tom Nessinger in the Media Bureau's Audio Division at (202) 418-2700. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Auction 100 Procedures Public Notice, released April 17, 2019. The complete text of the Auction 100 Procedures Public Notice, including attachments and any related document, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on

Fridays in the FCC Reference Information Center, 445 12th Street S.W., Room CY-A257, Washington, DC 20554. The Auction 100 Procedures Public Notice and related documents also are available on the Internet at the Commission's website: [www.fcc.gov/auction/100](http://www.fcc.gov/auction/100), or by using the search function for AU Docket No. 17-329 on the Commission's Electronic Comment Filing System (ECFS) web page at <https://www.fcc.gov/ecfs/>.

## **I. BACKGROUND**

1. Each applicant listed in Attachment A of the Auction 100 Procedures Public Notice previously filed a short-form application (FCC Form 175) during the initial filing window January 25 - 31, 2018, as an AM broadcaster seeking new cross-service FM translator construction permits. These applicants were previously given opportunities to eliminate their mutual exclusivity with other applicants' engineering proposals by settlement or technical modification to their proposals.

2. **Construction Permits and Entities Eligible to Participate in Auction 100.** Auction 100 will resolve by competitive bidding the remaining groups of mutually exclusive (MX) engineering proposals for FM translator construction permits. A list of the locations and channels of these proposed stations is included as Attachment A of the Auction 100 Procedures Public Notice. Attachment A also sets forth the names of applicants in each MX group, along with a minimum opening bid and an upfront payment amount for each construction permit in Auction 100.

3. Auction 100 is a closed auction; only those individual or entities listed in Attachment A of the Auction 100 Procedures Public Notice are eligible to complete the remaining steps to become qualified to bid in this auction. An applicant listed in Attachment A may become qualified to bid only if it conforms with the additional filing, qualification, and payment requirements, and otherwise complies with applicable rules, policies and procedures. Each listed applicant may become a qualified bidder only for those construction permits specified for that applicant in Attachment A of the Auction 100 Procedures Public Notice. Each of the engineering proposals within each MX group are directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A. Once mutually exclusive auction applications are accepted, and thus mutual

exclusivity exists for auction purposes, an applicant cannot obtain a construction permit without placing a bid, even if no other applicant for that particular construction permit becomes qualified to bid or in fact places a bid.

4. **Relevant Authority.** Auction 100 applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including Commission decisions in proceedings regarding competitive bidding procedures (47 CFR Part 1, Subpart Q), application requirements, and obligations of Commission licensees. Broadcasters should also familiarize themselves with the Commission's FM translator service and competitive bidding requirements contained in 47 CFR Parts 73 and 74, as well as Commission orders concerning competitive bidding for broadcast construction permits. Applicants must also be thoroughly familiar with the procedures, terms and conditions contained in the Auction 100 Procedures Public Notice and any future public notices that may be released in this proceeding.

5. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of each applicant to remain current with all Commission rules and with all public notices pertaining to Auction 100.

6. **Prohibited Communications.** Starting at the deadline for filing a Form 175 on January 31, 2018, the rules prohibiting certain communications set forth in 47 CFR 1.2105(c) and 73.5002(d), (e) apply to each applicant that filed a Form 175 in Auction 100. Subject to specified exceptions, 47 CFR 1.2105(c)(1) provides that all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other in any manner the substance of their own, or each other's, or any other applicant's bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.

7. Thus, public disclosure of information relating to bids, bidding strategies, or to post-auction market structures may violate 47 CFR 1.2105(c). In accordance with 47 CFR 73.5002(e), the

Wireless Telecommunications and Media Bureaus suspended for Auction 100 application of the prohibitions of 47 CFR 1.2105(c) and 73.5002(d) during specified periods for the limited purpose of allowing settlement discussions. Discussion of information covered by these rules outside of the settlement period would violate the rules.

8. **Entities Subject to Section 1.2105.** An applicant for purposes of this rule includes all officers and directors of the entity submitting the Form 175, all controlling interests in that entity, as well as all holders of interests amounting to 10% or more of that entity. A party that submits an application becomes an applicant under the rule at the application deadline and that status does not change based on subsequent developments. Thus, an Auction 100 applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified to bid, remains an applicant for purposes of 47 CFR 1.2105(c) and remains subject to the prohibition on certain communications until the applicable down payment deadline.

9. **Scope of Prohibition on Communications; Prohibition on Joint Bidding Agreements.** The Commission in 2015 amended 47 CFR 1.2105(c) to extend the prohibition on communications to cover all applicants for an auction regardless of whether the applicants seek permits or licenses in the same geographic area or market. The Commission also now prohibits a joint bidding arrangement, including arrangements relating to the permits or licenses being auctioned that address or communicate, directly or indirectly, bids, bidding, or bidding strategies, including arrangements regarding price or the specific permits or licenses on which to bid, and any such arrangements relating to the post-auction market structure. The revised rule provides limited exceptions for a communication within the scope of any arrangement consistent with the exclusion from the Commission's rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant's auction application. An applicant may continue to communicate pursuant to any pre-existing agreements, arrangements, or understandings that are solely operational or that provide for a transfer or assignment of license, provided that such agreements, arrangements or understandings do not involve the communication or coordination of bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid and provided

that such agreements, arrangements or understandings are disclosed on its application.

10. In recognition of the specific eligibility restrictions and filing procedures established by the Commission for the Auction 100 filing window, however, in the Auction 100 Filing Instructions Public Notice, the Bureaus waived for Auction 100 the provisions of section 1.2105(a)(3) to allow entities controlled by the same individual or set of individuals to file separate Forms 175. Some Auction 100 applicants under common control filed separate Forms 175 relying on the waiver of section 1.2105(a)(3).

11. In this public notice, Auction 100 applicants were reminded that the Commission presumes, due to the definition of an auction applicant contained in 47 CFR 1.2105(c), that bidding strategies are communicated between entities that share a common officer or director. Moreover, current rules bar most kinds of joint bidding agreements, including agreements for certain communication between commonly controlled entities or other auction applicants. Further, when there is a disclosable interest holder or holders for more than one Form 175 in the same auction, section 1.2105(a)(2)(x) requires that each such Form 175 include a certification that internal controls have been implemented that preclude any individual acting on behalf of an Auction 100 applicant from possessing information about the bids or bidding strategies, including post-auction market structure, of more than one Auction 100 applicant or communicating such information to anyone possessing such information regarding another Auction 100 applicant.

12. **Section 1.2105(c) Certification.** By electronically submitting its Form 175, each applicant in Auction 100 certified its compliance with 47 CFR 1.2105(c) and 73.5002(d). However, the mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated these communication prohibitions may be subject to sanctions.

13. **Reporting Requirements.** According to 47 CFR 1.2105(c)(4), any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the

communication occurs. Each applicant's obligation under 47 CFR 1.2105(c)(4) to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

14. **Procedures for Reporting Prohibited Communications.** Any report required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the Auction 100 Procedures Public Notice. For Auction 100, a party must file only a single report concerning a prohibited communication and the report must be filed with the Chief of the Auctions Division, Office of Economics and Analytics (OEA), by the most expeditious means available. Any such report should be submitted by email to Margaret W. Wiener at the following email address: [auCTION100@fcc.gov](mailto:auCTION100@fcc.gov). Any such report submitted in hard copy must be delivered only to: Margaret W. Wiener, Chief, Auctions Division, OEA, FCC, 445 12<sup>th</sup> Street, SW, Washington, DC 20554.

15. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection, such as, a submission to the Commission's Office of the Secretary or ECFS. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions Division staff about the procedures for submitting such reports.

16. **Winning Bidders Must Disclose Terms of Agreements.** Each applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement it has entered into. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply

with the Commission's rules can result in enforcement action.

17. **Compliance with Antitrust Laws.** Conduct that is permissible under the Commission's rules may be prohibited by antitrust laws. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the U.S. Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

18. **Due Diligence.** Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the cross-service FM translator construction permits that it is seeking in Auction 100. The FCC makes no representations or warranties about the use of this spectrum or these construction permits for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.

19. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, each potential bidder is strongly encouraged to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 100 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. Each applicant is strongly encouraged to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules

regarding the National Environmental Policy Act, 47 CFR Part 1, Subpart I.

20. Each applicant is strongly encouraged to continue to conduct its own research throughout Auction 100 in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in Auction 100. Each Auction 100 applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in Auction 100. These due diligence considerations do not comprise an exhaustive list of steps that should be undertaken prior to participating in Auction 100. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

21. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 100. Each potential bidder is responsible for undertaking research to ensure that any permits won in Auction 100 will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

22. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases.

23. **Use of Auction Systems.** The Commission makes no warranty whatsoever with respect to the FCC auction application system and the auction bidding system. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss)



arising out of or relating to the existence, furnishing, functioning, or use of the FCC auction systems that are accessible to qualified bidders in connection with Auction 100. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC auction systems.

## **II. SHORT-FORM APPLICATION REQUIREMENTS**

24. **Maintaining Current Information in Forms 175.** Each Auction 100 applicant has a duty pursuant to 47 CFR 1.65 and 1.2105(b) to continuously maintain the accuracy and completeness of all information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within 5 days of a significant occurrence, or to amend a Form 175 no more than 5 days after the applicant becomes aware of the need for the amendment.

25. **Minor Modifications to Forms 175.** After the initial application filing deadline on January 31, 2018, an Auction 100 applicant is permitted to make only minor changes to its application consistent with the Commission's rules. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicant, its responsible party, or its contact person. Pursuant to 47 CFR 1.2105(b), minor amendments include any changes that are not major, such as correcting typographical errors or supplying and correcting information as requested to support certifications made in the application.

26. In this context, major amendments to a Form 175 include a change of technical proposal, change in control of the applicant (e.g., certain changes in ownership or control that would constitute an assignment or transfer of control of the applicant), change in claimed bidding credit eligibility to a higher percentage of bidding credit, change in required certifications, change in the applicant's legal classification that results in a change of control, or change in the identification of the application's proposed facilities as noncommercial educational after the initial application filing deadline. If revised or updated information constitutes a major amendment as defined by section 1.2105, such changes will not be accepted and may result in dismissal of the application. Even if an applicant's Form 175 is dismissed, the applicant would remain subject to the prohibitions on certain communications of 47 CFR 1.2105(c)

until the down payment deadline for Auction 100.

27. **Submission of Updates to Forms 175.** Updates to Forms 175 should be made electronically using the FCC auction application system whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button.

28. An applicant should not use the auction application system outside of the initial and resubmission filing windows to make changes to its Form 175 for other than administrative changes (e.g., changing contact information). After the filing window has closed, the system will not permit applicants to modify information in most of the application's data fields.

29. If changes need to be made outside of the initial and resubmission filing windows for other than the minor administrative changes as described, the applicant must submit a letter briefly summarizing the changes and subsequently update its Form 175 in the auction application system once it is available. Any letter describing changes to an applicant's Form 175 must be addressed to Margaret W. Wiener, Chief, Auctions Division, OEA, and submitted by email to [auction100@fcc.gov](mailto:auction100@fcc.gov). The email summarizing the changes must include a subject or caption referring to Auction 100 and the name of the applicant, for example, "Re: Changes to Auction 100 Short-Form Application of ABC Corp." Parties should format any attachments to email as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about Form 175 amendments should be directed to the Auctions Division at (202) 418-0660.

30. Applicants must not submit application-specific material through the Commission's ECFS.

31. Submission of a Form 175 (and any amendments thereto) constitutes a representation by the person certifying the application that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

32. **Provisions Regarding Former and Current Defaulters.** Current defaulters or delinquents are not eligible to participate in Auction 100, but former defaulters or delinquents can participate so long as they are otherwise qualified and make upfront payments that are 50% more than would otherwise be necessary. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates (as defined in 47 CFR 1.2110), any of its controlling interests (as defined in 47 CFR 1.2105(a)(4)(i)), or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for Forms 175 in that auction.

33. Thus, an auction applicant must certify under penalty of perjury on its Form 175 that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, were not in default on any payment for a Commission construction permit or license (including down payments) and not delinquent on any non-tax debt owed to any Federal agency. Accordingly, if an applicant had an outstanding non-tax debt to the Commission or any other Federal agency, including any debt that resulted in a listing of the applicant on the Commission's Red Light Display System, the applicant would have been unable to make the required certification that it is not currently in default; if so, such applicant will not be eligible to participate in the bidding for Auction 100.

34. An applicant is considered a former defaulter or a former delinquent when the applicant or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies prior to the Form 175 filing deadline in Auction 100. Each Auction 100 applicant must certify under penalty of perjury whether it, along with any of its controlling interests (as defined in 47 CFR 1.2105(a)(4)(i)), has ever been in default on any payment for a Commission construction permit or license (including a down payment) or has ever been delinquent on any non-tax debt owed to any Federal agency. If an applicant or any controlling interest is a former defaulter or former delinquent, the applicant may participate further in Auction 100 so long as it is otherwise qualified and that applicant makes an upfront payment that is 50% more than would otherwise

be required.

35. In 2015, the Commission narrowed the scope of the individuals and entities to be considered a former defaulter or a former delinquent. For purposes of the certification under 47 CFR 1.2105(a)(2)(xii), the applicant may exclude from consideration any cured default on a Commission construction permit or license or any cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) the notice of the final payment deadline or delinquency was received more than seven years before the Form 175 filing deadline; (2) the default or delinquency amounted to less than \$100,000; (3) the default or delinquency was paid within six months after receiving the notice of the final payment deadline or delinquency; or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding.

36. Applicants are encouraged to review previous guidance on default and delinquency disclosure requirements in the context of the auction Form 175 process. For example, it has been determined that, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final payment deadline. Parties are encouraged to consult with the Auctions Division staff if they have any questions about default and delinquency disclosure requirements.

37. The FCC considers outstanding debts owed to the U.S. Government, in any amount, to be a serious matter. The FCC adopted rules that implement its obligations under the Debt Collection Improvement Act of 1996, including a provision referred to as the red light rule. The FCC's competitive bidding rules with regard to current and former defaults or delinquencies, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, are not affected by the red light rule.

38. The FCC's Red Light Display System, which provides information regarding debts currently owed to the FCC, may not be determinative of an auction applicant's ability to comply with the

default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current red light status is not necessarily determinative of its eligibility to participate in an auction (or whether it will have an increased upfront payment obligation).

39. Moreover, applicants in Auction 100 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Each applicant is strongly encouraged to carefully review all records and other available federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, currently owes or was ever delinquent in the payment of non-tax debt owed to any federal agency. An applicant that has its long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

### **III. PREPARING FOR BIDDING**

40. **Tutorial.** A bidding procedures tutorial is available in the Education section of the Auction 100 website and will remain accessible for reference.

41. **Correction of Application Deficiencies.** An applicant whose application is found to contain deficiencies will be provided with a limited opportunity to bring its application into compliance with the Commission's competitive rules during a resubmission window, the dates for which will be announced in a future public notice. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the Form 175, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by email to [auction100@fcc.gov](mailto:auction100@fcc.gov).

42. **Deadline for Upfront Payments.** In order to become eligible to bid in Auction 100, a sufficient upfront payment must be submitted by wire transfer to the FCC's account for Auction 100 at the U.S Treasury before 6:00 p.m. ET on May 23, 2019, following the instructions in Attachment B to the

Auction 100 Procedures Public Notice, together with submission to the FCC of a complete and accurate FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the Form 159. This Form 159 can be printed, and the completed form must be sent by fax to the FCC at (202) 418-2843, or by email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov).

43. **Upfront Payments and Bidding Eligibility.** Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permit(s) on which they will bid. The amount of the applicant's upfront payment will determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round. In order to bid on a particular construction permit, otherwise qualified bidders that are designated in Attachment A of the Auction 100 Procedures Public Notice for that construction permit, must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of the Auction 100 Procedures Public Notice, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits designated for that applicant in Attachment A of the Auction 100 Procedures Public Notice, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round. The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

44. In Auction 100, the upfront payment amount determines a bidder's initial bidding eligibility. The specific upfront payment amount and bidding units for each construction permit are set forth in Attachment A of the Auction 100 Procedures Public Notice. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add

together the bidding units for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

45. Applicants that are former defaulters must pay upfront payments 50% greater than non-former defaulters. For this classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included. For this purpose, the term controlling interest is defined in 47 CFR 1.2105(a)(4)(i). As required by 47 CFR 1.2106(a), if an applicant is a former defaulter, it must calculate its upfront payment for all of its construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of the Auction 100 Procedures Public Notice, the applicant will not be eligible to participate further in the auction. This applicant will retain its status as an applicant in Auction 100 and will remain subject to 47 CFR 1.2105(c) and 73.5002(d).

46. **Qualified Bidder Classification.** Only qualified bidders are permitted to bid. A qualified bidder is an applicant identified in Attachment A of the Auction 100 Procedures Public Notice, with a submitted Form 175 that is found to be timely filed, accurate, and substantially complete (i.e. substantially complies with the Commission's competitive bidding rules and other applicable Commission rules, as well as the procedures and deadlines set forth in the Auction 100 Procedures Public Notice, provided that such applicant has timely submitted an upfront payment following the procedures and instructions set forth in Attachment B to the Auction 100 Procedures Public Notice and that is sufficient for at least one of the construction permits for which it is designated as an applicant in Attachment A.

47. **Auction Registration.** All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. For security purposes,

the mailing will be sent only to the contact person at the contact address listed in the Form 175 and will include the SecurID® tokens that will be required to place bids, an FCC assigned username (User ID) for each authorized bidder, the bidding system web address and instructions for accessing and logging in to the auction bidding system, and the telephonic bidding telephone number.

48. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on June 19, 2019, the contact listed on that applicant's Form 175 must call the Auctions Hotline at (717) 338-2868. Receipt of the registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration materials.

49. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, contact, or certifying official on the applicant's Form 175 may request replacements. To request replacement of these items, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auction Hotline at (717) 338-2868.

50. Each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. Each SecurID® token is tailored to a specific auction.

51. **Mock Auction.** All qualified bidders will be eligible to participate in a mock auction on Friday, June 21, 2019. The mock auction will enable bidders to become familiar with the FCC auction bidding system and to practice submitting bids prior to the auction. All qualified bidders, including all authorized bidders, are strongly encouraged to participate in the mock auction.

#### IV. AUCTION STRUCTURE

52. **Simultaneous Multiple Round Auction.** The Commission's standard simultaneous multiple-round auction format will be used for Auction 100. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. Unless otherwise announced, bids will be



accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

53. **Eligibility and Activity Rules.** For Auction 100, the amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each construction permit is assigned a specific number of bidding units as listed in Attachment A of the Auction 100 Procedures Public Notice. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits for which it is designated an applicant in Attachment A of the Auction 100 Procedures Public Notice as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and therefore its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid or hold provisionally winning bids in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits for which it is designated an applicant in Attachment A in the Auction 100 Procedures Public Notice. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

54. To ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

55. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new bids in the current round and provisionally winning bids from the previous round. A provisionally winning bid is a bid that would become a final winning bid if the auction were to close after the given round.

56. In Auction 100, a bidder is required to be active on 100% of its current eligibility during each round of the auction. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

57. **Activity Rule Waivers.** In Auction 100, each bidder is provided with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic. Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

58. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

59. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the Auction 100 activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

60. Also, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively were to apply an activity rule waiver (using the proactive waiver function in the FCC auction bidding system) during a bidding round in which no bid is placed, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there is no new bid or a proactive waiver will not keep the auction open.

61. **Auction Stopping Rule.** For Auction 100, a simultaneous stopping rule approach will be employed, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bid or applies a proactive waiver.

62. Alternative versions of the simultaneous stopping procedure also may be employed for Auction 100. (1) The auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bid on a construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. (2) The auction would close for all construction permits after the first round in which no bidder applies a proactive waiver or places any new bid on a construction permit that already has a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not have a provisionally winning bid) would not keep the auction open under this modified stopping rule. (3) The auction would close using a modified version of the simultaneous stopping rule that combines options (1) and (2). (4) The auction would close after announcement of a specified number of additional rounds (special stopping rule). If this special stopping rule is invoked, bids in the specified final round(s) will be accepted, after which the auction will close. (5) The auction would remain open even if no bidder places any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility

or use a waiver.

63. These options will be exercised only in certain circumstances. For example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, it is likely that there will be an attempt to change the pace of the auction, such as, changing the number of bidding rounds per day and/or the minimum acceptable bids. The Media Bureau (MB) and OEA retain the discretion to exercise any of these options with or without prior announcement during the auction.

64. **Auction Delay, Suspension or Cancellation.** By public notice and/or by announcement through the FCC auction bidding system, bidding in Auction 100 may be delayed, suspended, or cancelled in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, MB and OEA, in their sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause delay or suspension of the auction. MB and OEA will exercise this authority solely at their discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

## **V. BIDDING PROCEDURES**

65. **Round Structure.** The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released at least one week before the start of bidding in the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day. Moreover, unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits. MB and OEA retain the discretion to change the bidding schedule, and may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

66. **Reserve Price and Minimum Opening Bids.** Normally, a reserve price is an absolute minimum price below which a construction permit or license will not be sold in a specific auction. There are no reserve prices for construction permits in Auction 100.

67. A minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. The specific minimum opening amount adopted for each construction permit is listed in Attachment A to the Auction 100 Procedures Public Notice.

68. **Bid Amounts.** If the qualified bidder has sufficient eligibility to place a bid on a particular construction permit, a bidder will be able to place a bid on a given construction permit in any of up to 9 different amounts. The FCC auction bidding system interface will list the 9 acceptable bid amounts for each construction permit. For calculation of the 9 acceptable bid amounts for each construction permit, Auction 100 will begin with a minimum acceptable bid increment percentage of 10% and an additional bid increment percentage of 5%.

69. In Auction 100, the minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount by one plus the minimum acceptable bid percentage—i.e., provisionally winning bid amount \* 1.10, rounded using the Commission's standard rounding procedures for auctions as described in the Auction 100 Procedures Public Notice.

70. In Auction 100, the FCC auction bidding system will calculate the 8 additional bid amounts by multiplying the minimum acceptable bid amount by the additional bid increment percentage of 5%, and that result (rounded) is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. Because the additional bid increment

percentage is 5%, the calculation of the additional increment amount is (minimum acceptable bid amount) \* (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2\*(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3\*(additional increment amount)); etc.

71. MB and OEA retain the discretion to change bid amounts, including the minimum acceptable bid amounts, the minimum acceptable bid percentage, the additional bid increment percentage, and the number of acceptable bid amounts if MB and OEA determine that circumstances so dictate. Further, MB and OEA retain the discretion to do so on a construction permit-by-construction permit basis. MB and OEA also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, MB and OEA could set a \$1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid. If MB and OEA exercise this discretion to change bid amounts, they will alert bidders by announcement in the FCC auction bidding system during the auction.

72. **Provisionally Winning Bids.** The FCC auction bidding system at the end of each bidding round will determine a provisionally winning bid for each construction permit based on the highest bid amount received for that permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Provisionally winning bids count toward activity for purposes of the activity rule.

73. The FCC auction bidding system, using a pseudo-random number generator, will assign a

pseudo-random number to each bid upon submission. In the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids), the tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

74. **Remote Electronic Bidding.** The Commission will conduct Auction 100 remotely over the Internet using the FCC auction bidding system, and telephonic bidding will be available as well. There will be no on-site bidding during Auction 100. Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of 10 minutes. All telephone calls are recorded.

75. An Auction 100 bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits designated for that applicant in Attachment A of the Auction 100 Procedures Public Notice and (2) the bidder's eligibility in that a bidder must have sufficient eligibility to place a bid on a particular construction permit. The bid submission screens will allow bidders to submit bids on only those construction permits designated for that applicant in Attachment A.

76. In order to access the bidding function of the FCC auction bidding system, bidders must be logged in during the bidding round using the passcode generated by the SecurID<sup>®</sup> token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

77. In each round, if a qualified bidder has sufficient eligibility for a particular construction permit, that bidder will be able to place bids on a given construction permit in any of up to 9 pre-defined bid amounts. For each construction permit, the FCC auction bidding system will list the acceptable bid

amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC auction bidding system also includes an upload function that allows text files containing bid information to be uploaded.

78. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that permit will be equal to its minimum opening bid amount. Once there are bids on a permit, minimum acceptable bids for the following round will be determined as described in the Auction 100 Procedures Public Notice.

79. During a round, an eligible bidder may submit bids for as many construction permits as it wishes (providing that it is eligible to bid on the specific permits), remove bids placed in the current bidding round, or permanently reduce eligibility. If multiple bids are submitted for the same construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidding units associated with construction permits for which the bidder has removed bids do not count towards current activity.

80. **Bid Removal and Bid Withdrawal.** In the FCC auction bidding system, each qualified bidder has the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By removing a bid within a round, a bidder effectively unsubmitted the bid. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

81. In Auction 100, bidders are prohibited from withdrawing any bid after close of the round in which that bid was placed. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed, even if a bid was mistakenly or erroneously made.

82. **Round Results.** Reports reflecting bidders' identities for Auction 100 will be available before and during the auction. Thus, bidders will know in advance of Auction 100 the identities of the bidders against which they are bidding.

83. Bids placed during a round will not be made public until the conclusion of that round.



After a round closes, reports will be compiled of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC-held, and bidder eligibility status (bidding eligibility and activity rule waivers). These reports will be posted for public access.

84. **Auction Announcements.** The Commission will use auction announcements to report necessary information such as schedule changes. All auction announcements will be available by clicking a link in the FCC auction bidding system.

## **VI. POST-AUCTION PROCEDURES**

85. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and long-form applications.

86. **Down Payments.** As required by 47 CFR 1.2107(b), within 10 business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 100 to 20% of the net amount of its winning bids (gross bids less any applicable new entrant bidding credit).

87. **Final Payments.** As required by 1.2109(a), each winning bidder will be required to submit the balance of the net amount for each of its winning bids within ten business days after the applicable deadline for submitting down payments.

88. **Long-Form Applications.** Section 73.5005(a) provides that within 30 days following the close of bidding and notification to winning bidders, unless a longer period is specified by public notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station) and required exhibits for each construction permit won through Auction 100.

89. As required by 47 CFR 1.1104, a winning bidder in a commercial broadcast spectrum auction must submit an application filing fee with its post-auction long-form application. When an

application filing fee is due by Auction 100 winning bidders, the amount may be higher or lower than the \$835 currently specified at 47 CFR 1.1104. See also 47 CFR 1.2107(c).

90. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice. An Auction 100 applicant that has its long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2107(c).

91. **Default and Disqualification.** Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make a full and timely final payment, or is otherwise disqualified) is liable for default payments as described in 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 100 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. The percentage of the applicable bid to be assessed as an additional payment for a default in Auction 100 is 20% of the applicable bid.

92. In the event of a default, the Commission has the discretion to re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

93. **Refund of Remaining Upfront Balance.** All refunds of upfront payment balances will be returned to the payer of record as identified on the Form 159 unless the payer submits written authorization instructing otherwise. This written authorization must comply with the refund instructions in the Auction 100 Procedures Public Notice.

## VII. PROCEDURAL MATTERS

94. **Paperwork Reduction Act.** This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, nor does it contain any new or modified information burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198. See 44 U.S.C. 3506(c)(4).

95. **Congressional Review Act.** The Commission will send a copy of this Auction 100 Procedures Public Notice to Congress and the Government Accountability Office pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A).

96. **Supplemental Final Regulatory Flexibility Act Analysis.** As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 601-612, the FCC prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the Broadcast Competitive Bidding Notice of Proposed Rulemaking (NPRM) and other FCC NPRMs (collectively Competitive Bidding NPRMs) pursuant to which Auction 100 will be conducted. Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the Broadcast Competitive Bidding Order and other FCC orders (collectively Broadcast Competitive Bidding Orders) pursuant to which Auction 100 will be conducted. In this proceeding, a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the Auction 100 Comment Public Notice, 83 FR 56031, Nov 9, 2018. The FCC sought written public comment on the proposals in the Auction 100 Comment Public Notice, including comments on the Supplemental IRFA. This Supplemental FRFA supplements the FRFAs in the Broadcast Competitive Bidding Orders to reflect the actions taken in the Auction 100 Procedures Public Notice and conforms to the RFA.

97. *Need for, and Objectives of, the Public Notice.* The procedures for the conduct of Auction 100 as described in the Auction 100 Procedures Public Notice implement the Commission's competitive bidding rules which have been adopted by the FCC in multiple notice-and-comment rulemaking proceedings. More specifically, the Auction 100 Procedures Public Notice provides an

overview of the procedures, terms and conditions governing Auction 100 and the post-auction application and payment processes, as well as setting the minimum opening bid amount for each of the cross-service FM translator construction permits that are subject to being assigned by competitive bidding.

98. To promote the efficient and fair administration of the competitive bidding process for all Auction 100 participants, including small businesses, the Office of Economics and Analytics (OEA), in conjunction with the Media Bureau (MB), in the Auction 100 Procedures Public Notice announce the following procedures: (1) use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping procedure (with discretion by MB and OEA to exercise alternative stopping rules under certain circumstances); (2) a specific minimum opening bid amount for each construction permit available in Auction 100; (3) a specific number of bidding units for each construction permit; (4) establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit; (5) so that bidders must bid actively during the auction rather than waiting until late in the auction before participating, Auction 100 is a single stage auction in which a bidder is required to be active on 100% of its bidding eligibility in each round of the auction; (6) provision of three activity waivers for each qualified bidder to allow it to preserve bidding eligibility during the course of the auction; (7) use of minimum acceptable bid amounts and additional acceptable increments, along with a proposed methodology for calculating such amounts, with MB and OEA retaining discretion to change their methodology if circumstances dictate; (8) a procedure for breaking ties if identical high bid amounts are submitted on one permit in a given round; (9) a prohibition on bid withdrawals in Auction 100; and (10) establishment of an additional default payment of 20% under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction.

99. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.*

There were no comments filed that specifically addressed the procedures and policies proposed in the Supplemental IFRA. In fact, no comments were filed in this proceeding after release of the Auction 100 Comment Public Notice.

100. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the FCC is required to respond to any comment filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed procedures as a result of those comments, 5 U.S.C. 604(a)(3). The Chief Counsel did not file any comments in response to the procedures that were proposed in the Auction 100 Comment Public Notice. The FCC will send a copy of this Auction 100 Procedures Public Notice, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA pursuant to 5 U.S.C. 604(b).

101. *Description and Estimate of the Number of Small Entities to Which the Proposed Procedures Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA, 15 U.S.C. 632.

102. Auction 100 is a closed auction; therefore, the specific competitive bidding procedures and minimum opening bid amounts described in the Auction 100 Procedures Public Notice will affect at a maximum only the 23 individuals or entities listed in Attachment A of the Auction 100 Procedures Public Notice and who are the only parties eligible to complete the remaining steps to become qualified to bid in Auction 100. These specific 23 individuals or entities listed in Attachment A include firms of all sizes.

103. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 firms

operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

104. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database as of September 6, 2018, about 11,024 (or about 99.92%) of 11,033 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition. The SBA size standard data does not enable MB and OEA to make a meaningful estimate of the number of small entities who may participate in Auction 100. There are a maximum of 23 individuals or entities that may become qualified bidders in Auction 100, in which applicant eligibility is closed. The specific procedures and minimum opening bid amounts announced in the Auction 100 Procedures Public Notice will affect directly all applicants participating in Auction 100.

105. MB and OEA are unable to accurately develop an estimate of how many of these 23 individuals or entities are small businesses based on the number of small entities that applied to participate in prior broadcast auctions, because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in auctions for wireless service licenses). Due to the eligibility criteria established by the FCC, potential bidders in Auction 100 may include only existing holders of broadcast station construction permits or licenses. In 2013, the FCC estimated that 97% of radio broadcasters met the SBA's prior definition of small business concern, based on annual revenues of \$7 million. The SBA has since increased that revenue threshold to \$38.5 million, which suggests that an even greater percentage of radio broadcasters would fall within the SBA's definition. Based on FCC staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database, 4,626 (99.94%) of 4,629 AM radio stations have revenue of \$38.5 million or less. Accordingly, based on this data, MB and OEA conclude that the majority of Auction 100 bidders will likely meet the SBA's definition of a small business concern.

106. In assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included. This estimate therefore likely overstates the number of

small entities that might be affected by Auction 100 because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which Auction 100 competitive bidding requirements may apply does not exclude any radio station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Furthermore, it is not possible at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. In addition, given the difficulty in assessing these criteria in the context of media entities, these estimates of small businesses to which they apply may be over-inclusive.

107. *Description of Projected Reporting, Recordkeeping, and Other Compliance*

*Requirements for Small Entities.* As articulated in a 1994 rulemaking order, the FCC designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. For all spectrum auctions, in the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment.

108. To become qualified to bid in Auction 100, applicants, including small entities, must submit a Form 175 that is timely and is found to be substantially complete and submit an upfront payment that is timely and sufficient for at least one of the construction permits for which it is designated as an applicant on the Public Notice's Attachment A. The submission of the upfront payment must comply with the instructions provided in the public notice. As established by the Commission in a 1994 rulemaking order and in accordance with the terms of 47 CFR 1.2105(b)(2), an applicant whose application is found to contain deficiencies will have a limited opportunity to bring its application into compliance with the Commission's competitive bidding rules during a resubmission window. As required by 47 CFR 1.65 and 1.2105(b), each Auction 100 applicant must maintain the accuracy of its

previously filed Form 175. As required by 47 CFR 1.1111, each upfront payment must be accompanied by a Form 159.

109. In the second phase of the process, there are additional compliance requirements only applicable to winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the terms of: (1) 47 CFR 1.2107(b) by submitting as a down payment within 10 business days after release of the auction closing public notice sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the FCC for Auction 100 to 20% of the net amount of its winning bid(s), a requirement adopted by the FCC in a 1994 rulemaking order; (2) 47 CFR 1.2109(a) by submitting within 10 business days after the down payment deadline the balance of the net amount for each of its winning bids, a requirement adopted by the FCC in a 1994 rulemaking order; and (3) 47 CFR 73.5005(a) by filing electronically within 30 days following release of the closing public notice, unless a longer period is specified by public notice, a properly completed long-form application and required exhibits for each construction permit won through Auction 100, a requirement adopted by the FCC for broadcast auction winning bidders in a 1998 rulemaking order.

110. As required by 47 CFR 1.2105(c), reports concerning a prohibited communication must be filed with the Chief of the Auctions Division, as detailed in the Auction 100 Procedures Public Notice.

111. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. See 5 U.S.C. 603(c)(1)-(4).

112. MB and OEA anticipate that the steps taken to make numerous resources available to small entities and other auction participants at no cost should minimize any economic



impact of the auction processes and procedures on small entities and should result in both operational and administrative cost savings for small entities and other auction participants. For example, prior to the beginning of bidding in Auction 100, the FCC will hold a mock auction to allow eligible bidders the opportunity to familiarize themselves with both the processes and systems that will be utilized in Auction 100. During the auction, participants will be able to access and participate in bidding via the Internet using a web-based system, or telephonically, providing two cost effective methods of participation and avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of a telephonic hotline for assistance with auction processes and procedures as well as a technical support hotline to assist with issues such as access to or navigation within the electronic Form 175 and use of the FCC's auction bidding system. In addition, all auction participants, including small business entities, will have access to various other sources of information and databases through the Commission that will aid in both their understanding and participation in the process. These resources, coupled with the description and communication of the bidding procedures before bidding begins in Auction 100, should ensure that the auction will be administered predictably, efficiently and fairly, thus providing certainty for small entities as well as other auction participants.

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[FR Doc. 2019-13100 Filed: 6/19/2019 8:45 am; Publication Date: 6/20/2019]